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Supreme Court, U.S.
FILED

IN THE 02 1707 MAR 11 2003

OFFICE OF THE CLERK

Supreme Court of the United States

October Term 2002

Garrett Burkhart

v

Diana L. Quilici,

On Petition For Writ Of Certiorari

To The California Supreme Court

PETITION FOR WRIT OF CERTIORARI

Garrett R. Burkhart, **D.D.S.**
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In propria persona

41PP

QUSESTION PRESENTED

In his first year on the family court bench, Judge James Mize stated he has no jurisdiction to go back and rule on an old judgment from the already affirmed judgment; yet he does it anyway. Isn't that a violation of due process of law? Is Appellee Dentist Quilici barred from bringing forth a motion order to show cause for accounting and property division six years after the family court makes orders on the issues? Is Appellee Dentist Quilici barred from driving forth a motion order to show cause for accounting and property division two years after the Court of Appeals affirmed in full the final judgment?

The law makes it unlawful to hold a second trial and make a second judgment once a case has already been adjudicated. California's Third District Court of Appeal had previously affirmed the adjudication between the same parties over the same facts and figures. How is it possible that Judge Mize during the first year as a judge is able to hold another trial over adjudicated accountings and property division and make new findings that appellant owes the community $33,000? Does this unconstitutionally deprive Appellant Dentist Burkhart of his right under U.S. Constitution Amendment VII? Thus should not the new finding of Judge Mize after the judgment was affirmed in full be vacated? Are Appellant Dentist Burkhart's Fifth Amendment rights to due process of law violated?

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In The Supreme Court of the United States
October Term, 2002

Garrett Burkhart, Appellant

v.

Diana L. Quilici, Appellee

PETITION FOR A WRIT OF CERTIORARI

Dentist Garrett R. Burkhart respectfully petitions for a writ of certiorari to review the judgment of the California Supreme Court from the California Court of Appeal from the First-Year Sacramento Family Court Judge James M. Mize in this case.

OPINIONS BELOW

The opinion of the California Supreme Court (App., infra,) is unreported under protest. The opinion of the court of appeals (App., infra,) is unreported under protest. The new finding of the new family court judge from the affirmed 1997 judgment (App., infra,) is unreported and under protest. Appellant Dentist Burkhart requests The Court to order everything published.

JURISDICTION

The court of appeals entered its judgment on October 8, 2002. A petition for rehearing was denied on November 5, 2002. The California Supreme Court denied a petition for review and denied publication on December 11, 2002. Appellant requested a sixty-day extension. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

CONSTITUTUIONAL AND STATUTORY PROVISIONS INVOLVED

The Seventh Amendment to the United States Constitution provides in relevant part that "Where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States . . . ."

The Fifth Amendment to the United States Constitution provides in relevant part that "Nor shall any person be subject for the same offense to be twice put in jeopardy" . . . "nor be deprived of life, liberty, or property, without due process of law. . . ."

Canon 2A of the Code of Conduct for United States Judges provides: "A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary." 175 F.R.D. 363, 365 (1996)

California's Code of Civil Procedure Section 598 Notes Of Decision: "A trial court has no authority to enter multiple final judgments determining multiple issues between the same parties to an action."

STATEMENT

The court of appeals only noted one family law case: In re Marriage of Quilici and Burkhart (July 29, 1999, C027807 / C029718 [nonpub. opn.].) So they already identified stare decisis yet they neglected to abide by it. Certified Public Accountant Honorable Charles C. Kobayashi of the Sacramento Superior Court hand wrote orders in 1996 with hand-written calculations in a 1997 final judgment in this very same family law case (Sacramento Superior Court Case #95FL04792.) Dr. Garrett Roy Burkhart appealed. (See In re the Marriage of Diana Quilici and Garrett Burkhart Case # C027807 Court of Appeal of the State of California In And For The Third District.) Dentist Diana L. Quilici made no objections to the Judge Kobayashi (i.e. the trial court ⌙⊢ º996 Orders and 1997 Final Judgment.) Trial Judge Kobayashi's judgment should not be touched. Before Respondent Quilici was fighting not to change the

judgment; and now she is fighting to change it. In fact at Oral Argument, Justices Scotland, Callahan, and Davis witnessed Dr. Quilici state that Judge Kobayashi bent over backwards going all through this case as she was crying and shaking. Amongst her tears, Dr. Quilici told the Justices of the Third District Court of Appeal how this long drawn out process caused a great toll on her life and that she wanted to move on with her life. This same theme rang out in her Respondent's Brief all the while never ever raising any objections to the trial court's orders and final judgment. (Please also refer to Respondent's Brief CO27807 and CO29718 as made possible under California Rules of Court, Rule 11 (b)). In fact, Dr. Quilici was the one who typed up the 1996 Orders and 1997 Final Judgment. (CT 77- 81 and CT 18 - 26 respectively).

In 1999, The Court of Appeal of the State of California In And For The Third District affirmed the trial court, Judge Kobayashi's orders and final judgment. (CT 31) DISPOSITION: The judgment and orders are affirmed, wrote Justice Callahan. (CT 61) We concur, said Justices Scotland and Davis. CASE COMPLETE docketed The Court of Appeal For The Third District of The State of California on November 9, 1999. (See CT 65 or also refer to 3 Civil CO29718 under California Rules of Court, Rule 11(b))

Lacking due diligence, Dr. Quilici filed her objection in 2001 and named it A Motion Order To Show Cause For Accounting and Property Division. (CT 69, 66-70). Dentist Quilici requested the court do an accounting of the court orders of August 15 and 16 1996 (filed Sept. 17, 1997) (attachment C) and the Statement of Decision and judgment on bifurcated issues signed into order September 16, 1997 (attachment D). Attachment E is a propertizer showing the amount owed with interest at the actuary rate of 10 % added for the last 4 years petitioned Dr. Quilici in 2001. (CT 69 - 70). Also note Dentist Quilici's propertied was done suspiciously done by Downey, Brand, Seymour & Rohwer on November 9, 2000 when Judge Kobayashi was no longer in family court. (CT 92.) Dr. Quilici's objection to C.P.A. Judge Kobayashi's 1996 orders and 1997 final judgment comes so late after everything was decided and finished that the trial judge, Judge Kobayashi is not even there anymore. In

fact, Dr. Quilici's objections come so many years late that the court itself has moved from 9th Street to Power Inn Road.

Despite all the number of years since 1996, which is 7 years, and objections from Dr. Burkhart, a brand new judge, Judge James M. Mize heard Dr. Quilici's Motion Order To Show Cause For Accounting And Property Division under protest from Dr. Burkhart. Judge Mize set the case for trial under protest. Judge Maryanne G. Gilliard made one ruling; then back to Judge Mize to hear the trial and motion to dismiss. After the trial, Judge Mize dismissed Dr. Burkhart's motion to dismiss Dr. Quilici's 2001 complaint. Judge Mize then signed 2 different Findings After The Hearing over the same trial. So in effect, there is one final judgment from C.P.A. Judge Kobayashi back in 1997 which this very Court affirmed in full, and 2 judgments Judge Mize made in 2001 from the 1997 judgment.

This is an appeal by Garrett Roy Burkhart, D.D.S. (Appellant Burkhart) from the 2001 proceedings and two judgments of Judge James M. Mize of the Superior Court of Sacramento County in an action instituted yet again by Diana L Quilici, D.D.S. (Appellee Quilici) against Appellant Burkhart in the same family law case for accounting and property division. The action below was tried without a jury and culminated in a final judgment by Honorable and Certified Public Accountant Charles C. Kobayashi in 1997 and affirmed in full by the Third District Court of Appeals for the State of California in 1999. In 2001 Judge Mize put his own modifying spin on the affirmed 1997 final judgment and issued not one but two different final final judgments under protests of Appellant Burkhart.

Appellant Burkhart wants The California Third District Court of Appeal Justices Scotland, Callahan, and Davis's decision in 1999 to affirm Certified Public Accountant Trial Court Judge Kobayashi's orders and final judgment to be reaffirmed by The Court. In so doing The Court needs to vacate the new findings of Judge Mize. So to honor the Third District Court of Appeal Justices Scotland, Callahan, and Davis's 1999 decision, The Court must vacate the two new and different decisions from Judge Mize filed September 27, 2001 and October 10, 2001 (CT 118- 120 and Augmented CT 1 - 3 respectively).

Please refer to In re Marriage of Diana Quilici and Garrett

Burkhart Case No. 3 Civil CO27807 (Consolidated with 3 Civil CO29718) for the foundation and final judgment which was affirmed in full by Justices Scotland, Callahan, and Davis of The Third District Court of Appeal of the State of California on July 29, 1999. Under California Rules of Court, Rule 11(b) read over Respondent's Brief she filed in 1998 with the court of appeal. Dentist Quilici never made any objections nor asked for any accounting of the 1996 Orders nor 1997 Final Judgment.

Yet years later, Respondent Quilici filed her objection in a complaint named Motion Order To Show Cause for Accounting and Property Division on April 23, 2001. *In her late objection, Respondent Quilici wants another accounting done from the 1996 and 1997 Certified Public Accountant Honorable Judge Charles Kobayashi's calculations and accounting made in his own Hand-Written Minute Order (CT 1- 3 and CT 4 - 14).*

Lacking due diligence, Dr. Quilici filed her objection in 2001 and named it A Motion Order To Show Cause For Accounting and Property Division. (CT 69, 66-70). Dentist Quilici requested the court do an accounting of the court orders of August 15 and 16 1996 (filed Sept. 17, 1997) and the Statement of Decision and judgment on bifurcated issues signed into order September 16, 1997. "Attachment E is a propertied showing the amount owed with interest at the actuary rate of 10 % added for the last 4 years." wrote Dentist Quilici in 2001. (CT 69 - 70)

Because it has been so long, Judge Kobayashi is no longer the presiding judge. In fact so many years have gone by since the final judgment which Dentist Quilici now wants another accounting of the accounting that Judge Kobayashi is not in family court anymore, having served longer than any other judge in family court and the building location has even changed and we are now in the 21st century. Only months appointed to the Sacramento Superior Court, Judge James M. Mize set the matter for trial and ordering Appellant's request to dismiss Dentist Quilici's Motion Order to Show Cause For Accounting and Property Division to be heard by the trial court. (See CT 119 lines 5 - 6).

Dentist Quilici, who wanted the trial in 2001, never filed nor served a pre-trial statement. (Please see Deputy Clerk J. Escay's

Letter to The Court of Appeal noting because Dentist Quilici never filed and served her Statement of Issues for the Trial on the Long Cause, it could not be designated. Appellant Burkhart, however, filed and served a pretrial statement on July 2, 2001. In his Statement Of Issues, Appellant Burkhart again protests and makes his objections before the court. In detail before the court citing law and case law, Appellant Burkhart emphasis res judicata (CT 108 - 109); termination of jurisdiction (CT 108); estoppel by judgment (CT 112); issue preclusion and collateral estoppel (CT 112).

One day before the trial, Judge Mize of Department 123 of Sacramento Superior Court, continued the motion in limine on July 25, 2001 under protest of appellant to July 26, 2001. (CT 124 line 1)

On the day Judge Mize set the trial, Presiding Judge Michael S. Ullman was absent. This lead to massive confusion between the remaining family court judges as to who would be the trial court for this case. Who would hear appellant's motion to dismiss Respondent Quilici's complaint? Appellant Burkhart and Appellee Quilici went from Judge Ullman's Courtroom back to Judge Mize's Courtroom. At Judge Mize's Courtroom, the bailiff told the parties to go to Department 122 Judge Maryanne Gilliard for the trial. While there, Judge Gilliard granted the application to quash the subpoena to have Justices Scotland, Callahan, and Davis testify that Respondent Quilici confessed that she was satisfied with the 1996 Court Orders and 1997 Final Judgment during her oral argument before them. (CT 124 lines 3 - 4 .) Then Judge Gilliard of the Sacramento Superior Court sent both parties back to Department 123 Judge Mize's Courtroom. Judge Mize then ordered both parties to come back to the court the following day.

The next day, Appellee Quilici and Appellant Burkhart went back and forth again like a ping- pong ball between Judge Mize to Judge Gilliard then back to Judge Mize. In fact, when the court was in session in another case, Judge Gilliard interrupted the current case and told both Appellee Quilici and Appellant Burkhart to go back to Judge Mize because he was going to be the one to hear Dentist Quilici's complaint. So Judge Mize turned out to be the new trial court based on Dentist Quilici's 2001 Motion Order To Show Cause For Accounting and Property Division. The 2001 new trial court

(Judge Mize) used the original trial court i.e. Certified Public Accountant Judge Kobayashi's accounting in the 1996 Orders and 1997 Final Judgment. With no new facts, nor new amounts to be considered from the original Final Judgment from the original trial court (Judge Kobayashi), the new trial court did his own accounting as spurred on by crying and shaking Quilici. (CT 124 lines 7 - 13.) This was done despite several of Appellant Burkhart's protests of having another trial in 2001 from Court Orders of 1996 and 1997 Final Judgment including res judicata, laches, lack of jurisdiction, (CT 108 - 112)

Judge Mize intentionally ignored all of appellant's protests. Appellant Burkhart requested a continuance when witness did not show up. Judge Mize denied Appellant Burkhart's request for continuance. (CT 124 - 125.) Judge Mize had the trial under protest. (CT 124 lines7 - 9.) After the trial, Judge Mize dismissed Appellant Burkhart's notice of motion to dismiss Quilici's Motion Order To Show Cause For Accounting And Property Division. (CT 124 lines 21 - 23.) Also after the trial, the trial court dismissed Appellant Burkhart's motion in limine also under protest. (CT 124 lines 24.) The new trial court ordered: Neither party may file any documents without prior order of the Court. (CT 98.2 which in Appellant's CT is placed between CT 114 and 115.) The new trial court then made a statement of decision: "I would indicate that on each of the items as indicated and requested to be ordered in this court, I have listed very carefully in the record the foundation for my ruling, the factual basis for the ruling, and the legal basis for the ruling; and therefore the statement of decision is included within the transcript of these proceedings." (CT 125.) Appellant submitted the matter for reconsideration and revoke the prior 2001 order made by Judge Mize, but was also denied. Notice of appeal was timely filed on September 25, 2001 (CT 115 - 116.) The record on appeal was filed October 19, 2001. Augmented record was filed November 20, 2001.

No new facts were entered into evidence for the new Trial Judge to come up with two different new judgments. This family law case was over and done with several years ago. Please see In re Marriage of Diana Quilici and Garrett Burkhart Case No. 3 Civil CO27807 (Consolidated with 3 Civil CO29718.) This very same

court (Third District Court of Appeal for The State of California affirmed the 1996 Court Orders and 1997 Final Judgment. Case Complete As so docketed by your own clerk on November 9, 1999 (CT 65 .) So why are we all here again? < Diana L. Quilici> *"Fanatic"* is how Witness Mike Mizinski describes Diana Quilici (CT 75 .) Attorney Jerry Guthrie described Diana Quilici as *"litigious"* when after all of six years she filed on April 23, 2001 a Motion Order To Show Cause For Accounting and Property Division on the 1996 Court Orders and 1997 Final Judgment. (CT 66 - 70.)

Ignoring Appellant Burkhart's multiple objections of res judicata, laches, lack of trial court jurisdiction over property issues after three years, etc, the First-Year Trial Judge James M. Mize took it upon himself to grant Diana Quilici's Motion Order To Show Cause For Accounting and Property Division. The new trial judge had another trial over the same things as the original trial judge did in the original trial. No new facts were entered into evidence. Despite no new mediator's report, no new testimony, no new disclosure of property, no discovery, no new parties, the New Trial Court Judge Mize, also newly appointed to the Sacramento Superior Court came up with not one but two new different judgments. Apparently, the new trial court judge thought the original trial court judge was negligent. Why else would a trial judge make 2 new and different judgments knowing that a final judgment was rendered back in 1997? Apparently the new trial court judge thought Justices Scotland, Callahan, and Davis of the Third District Court of Appeals of the State of California did not know what they were doing when they affirmed in full the original trial court's judgment back in 1999.

This closed case became and open case again when lacking due diligence, Diana Quilici filed her objection in 2001 and named it A Motion Order To Show Cause For Accounting and Property Division. (CT 69, 66-70). [Diana Quilici] requests the court do an accounting of the court orders of August 15 and 16 1996 (filed Sept. 17, 1997) and the Statement of Decision and judgment on bifurcated issues signed into order September 16, 1997 "Attachment E is a propertied showing the amount owed with interest at the actuary rate of 10 % added for the last 4 years." Quilici wrote in 2001. (CT 69 - 70.)

Certified Public Accountant Presiding Trial Judge Charles Kobayashi calculated the Court Orders of 1996 and Final Judgment of 1997. But he is not there anymore, and the old courthouse building on 9th Street does not handle family court matters anymore. So with a brand new building on Power Inn Road and a new judge who has worn the robe for a few months, Respondent Quilici wants to get a new judgment. The New Trial Court Judge Mize abandons the prior orders, final judgment, and statement of decision. The New Trial Court Judge Mize disregards the 1999 appellate court's decision to abide by the original trial court's orders and judgment. The New Trial Judge Mize purposely and willfully wipes the final judgment away and has his own trial, makes two new different final judgments, and makes his own statement of decision in 2001. Perhaps the Court of Appeals for the Third District In and For The State of California should have been more clear when they affirmed in full the final judgment. (CT 31 - 61.) Perhaps Justices Scotland, Callahan, and Davis would be so kind to submit a brief stating that Quilici confessed at Oral Argument on July 21, 1999 at 2:00 that she was satisfied with Judge Kobayashi's Final Judgment (Quilici's Response on page 2 Filed February 13, 1998 Case C027807.) Dentist Quilici cried and shook back and forth in front of these three justices and said she had enough and did not have any objections to the 1996 Court orders or the 1997 Judgment. In fact, she turned the whole thing around and blamed Appellant Burkhart for everything.

Now, in 2001, Quilici starts up the same old issues again in her Motion Order To Show Cause For Accounting and Property Division (CT 66 - 70.) And instead of dismissing her motion, the New Trial Court Judge Mize sets a date for trial and continues the motion to dismiss because he says that the trial court should hear the motion to dismiss and he did not know if he would be the trial court judge or not. When 1st Year Judge Mize finds himself being the trial court, he has a trial. Judge Mize addresses and acknowledges all of Quilici's old issues. Judge Mize even takes it upon himself to re-calculate the accounting of The Presiding Honorable Certified Public Accountant Trial Judge Charles Kobayashi. Apparently, Judge Mize thought Judge Kobayashi was negligent in his accounting of the Court Orders of 1996 and Final Judgment of 1997. Despite constant

objections from the appellant for many reasons, the trial court had his trial and endorsed two final judgments. Apparently it was not enough to go back over the accounting from a Judge Kobayashi, Judge Mize was just getting warmed up and decided to make a new finding on custody when it was not one of Quilici's issues in her Motion Order To Show Cause For Accounting and Property Division (the title kind of gives it away as to what Quilici's issues are($) The New Trial Judge Mize denied everything Appellant Burkhart asked for including continuance because his Subpoenaed Witness Charles Torgersen did not show up (CT 119 - 120); sanctions / continuance because Respondent Quilici never filed and served her pre-trial statement (CT 119 lines 9 - 13) and he did. (CT 98.) Only after the trial, Judge Mize then heard, or rather gave a few minutes for Appellant Burkhart's Motion To Dismiss Quilici's Motion Order To Show Cause For Accounting And Property Division. (CT 119 lines 21 - 23.) Judge Mize denied that too. Then after he granted everything Quilici and then some, but denied everything Appellant Burkhart asked for, Judge Mize ordered that neither party can file anything else and labeled this case: Case Management.

REASONS FOR GRANTING THE PETITION

I. The Effect of affirmance ends litigation.

The remittitur to the trial court clerk filed October 29, 1999 states: Affirmed Judge Kobayashi(CT 31.) The judgment and orders affirmed, writes Justice Callahan. We concur, writes Justices Scotland and Davis of the Third District Court of Appeals for The State of California. (CT 61 and In re the Marriage of Diana L. Quilici and Garrett Burkhart Case C027807 and C029718 (Super. Ct. No. 95FL04792.) A general or unqualified affirmance ordinarily sustains the judgment and ends the litigation. The respondent can enforce the judgment, the trial court cannot modify it, and further proceedings are improper. Witkin, California Procedure, Appeal section 742 (4th ed. 1997 volume 9, page 772.) The New Honorable Mize should not have touched Trial Judge Kobayashi's Orders of August 15, 1996 and August 16, 1996 and the statement of decision and judgment on bifurcated issues filed September 16, 1997 which were affirmed by this very same Court of Appeals.

The New Trial Judge Mize acted improper when granting

Quilici's Motion: [Diana L. Quilici] requests the court do an accounting of the court orders of August 15 and 16 1996 (filed Sept 17, 1997) (attachment C) and the Statement of Decision and judgment on bifurcated issues signed into order September 16, 1997 attachment D)." (CT 69 lines 22 - 25 and CT line 1.) Am. Jur.2d, Appellate Review Section 828 et seq.; 85 A.L.R.2d 772 also supports the argument that the further proceedings of Trial Judge Mize's decisions in 2001 were improper and need to be vacated. The **Non**Certified **Non**Public **Non**Accountant Judge Mize's judgment should be vacated so that the Certified public Accountant Judge Kobayahi's judgment will stand.

II. Res judicata is another reason for granting the petition. This case has already been decided. This case has already been decided in 1996 and 1997. In her Motion Order To Show Cause For Accounting And Property Division filed April 23, 2001 (CT 66 - 70,) Quilici moved the New Trial Judge James Mize to go back to The 1996 Court Orders and 1997 Final Judgment made by Presiding Honorable Charles Kobayashi (CT 1, 4, 18.) Not only did The 1st Year Appointed To The Superior Court Trial Judge Mize allow Quilici to re-litigate old issues, but he came up with a new accounting and new calculations based on old issues. Judge Mize took it upon himself to fix 1996 Court Order and 1997 Final Judgment that was done by Certified Public Accountant and Presiding Trial Judge Kobayashi. If that is not bad enough, Judge Mize changed 1996 Court Orders and 1997 Final Judgment that The Court of Appeals of the State of California Third District Appellate Court previously ordered no modification! Justices Scotland, Callahan, and Davis affirmed in full Judge Kobayashi's 1996 Court Orders and 1997 Final Judgment. If the Third District Court of Appeal Justices wanted any modifications, or thought any changes were needed to be made to Trial Judge Kobayashi's orders and final judgment, they would have said so. Instead of remanding the case back down to the trial court for modification, Justices Scotland, Callahan, and Davis affirmed in full Judge Kobayashi's 1996 Court Orders and 1997 Final Judgment. There was no second guessing Judge Kobayashi's Judgment from California's Third District Appellate Court. The higher Court did not order the lower court to

modify the judgment. At that time when she benefited from the judgment, Quilici made it clear that she was not second-guessing the judgment even before The Court of Appeal of the State of California Third Appellate District. Dr. Burkhart is appealing the verdict of Judge Kobayashi, I am not, wrote Quilici (Original Records, Original Sacramento Case #95FL04792 C027807 Filed February 13, 1998 page 2 in Quilici's Response to Application For Motion for Request from Relief of Respondent's Designation Or In The Alternative Motion TO Strike Respondent's Designation; Order.) Yet, in 2001 Quilici does indeed have objections to the verdict of Judge Kobayashi. Why else did she file her motion to have Judge Kobayashi's verdict modified and changed? Only after the every issue of this case has been appealed does Quilici now want to roll back the hands on the clock and make up a new verdict. So there was no reason for Judge Mize to do what he did and enter new judgments. And why two judgments? How naivety does he think he can re-do the accounting better than that of a Certified Public Accountant Presiding Trial Judge Kobayashi.

There was no just cause for Judge Mize to allow Quilici to re-litigate her case. There was nothing different in the 2001 trial as compared the 1996 trial. Quilici did not file nor serve a pretrial statement as noted by the Clerk's response in 2001 upon designation of record. So that her motion filed April was all Judge Mize had. The parties were the same: Garrett Roy Burkhart, D.D.S. and Diana Lynne Quilici, D.D.S. In her Motion Order to Show Cause For Accounting And Property Division filed April 23, 2001. Quilici claimed no fraud, nor no new facts. SO how was the trial court able to ignore the law and Appellant Burkhart's arguments like res judicata (CT 108 - 109.) "All issues were appealed" as Quilici stated before Judge Mize (CT 100.) Appellant Burkhart stated before the trial court:

> "On July 29, 1999, The Third District Court of Appeals docketed: Case Complete Affirmed in full by justices Callahan, Scotland and Davis. There is no order to modify, no order to do an accounting, no order to do a property division." (CT 110 - 101.)

Judgment provisions regarding property rights are no modifiable.

(Leupe vs Leupe (1942) 21 C2d 145, 148 130 P2d 697, 699; Esserman vs Esserman (1982) 136 CA 3d 572, 186 CR 329.

So by granting Quilici's 2001 Motion Order To Show Cause for Accounting And Property Division and having another trial thereby modifying the 1997 judgment, Judge Mize knowingly violated the law and committed a series of erroneous procedures created a complete miscarriage of justice.

Once Judge Kobayashi's Judgment and Statement of Decision became final in 1997 and affirmed in full by Justices Scotland, Callahan, and Davis of The Third District Court Of Appeal For The State of California (of this very same Court) the doctrine of res judicata prevents relitigation of any issues. All other portions of the judgment not appealed from become res judicata when the period taking an appeal expires. (See Whalen vs Smith (1992) 163 C 360, 362, 125 P 904, 905.)

The doctrine or res judicata is composed of two parts: claim preclusion and issue preclusion. Claim preclusion prohibits a party from relitigating a previously adjudicated cause of action; thus, a new lawsuit on the same cause of action is entirely barred. Issue preclusion, or collateral estoppel, applies to a subsequent suit between the parties on a different cause of action. Collateral estoppel prevents the parties from relitigating any issue which was actually litigated and finally decided in the earlier action. The issue decided in the earlier proceeding must be identical to the one presented in the subsequent action. (Flynn v. Gorton (1989) 207 Cal.App. 3d 1550, 1554 [255 Cal.Rptr. 768.] The most important criterion in determining that two suits concern the same controversy is whether they both arose from the same transactional nucleus of facts. (Worton v. Worton (1991) 234 Cal.App.3d 1638; Cal.Rptr. 410.) If so, the judgment in the first action is deemed to adjudicate for purposes of he second action every matter which was urged, and every mater which might have been urged, in support of the cause of action or claim in litigation. (Hulsey v. Koehler (1990) 218 Cal.App.3d 1150, 1157 [267 Cal.Rptr. 523].)

Quilici said before the court that all issues have been appealed. She even writes before the court all the Caused of Action in the present case have been before the Superior Court and the Third

District Court of Appeals and they have been decided. (See CT 30 # C036232.) It is time for The Court to step up and bar her from relitigating these same old issues and vacate the 2001 decisions of the New Trial Court Judge Mize.

III. Laches is another reason for granting the petition.

Quilici 's action should be barred by laches. Quilici's application for accounting and property division filed April 23, 2001 should not have been allowed due to an unreasonable length of time. Applications will not be allowed to pend indefinitely or for an unreasonable length of time. An application will also be subject to denial if it reasonable appears that applicant is not actively correcting reported defects and remedying deficiencies in good faith, or that it will be impossible for applicant within a reasonable time to comply with the Commissioner's appropriate lawful requirements. (10 Cal. Code of Regs. Section 2603.21.)

"[Quilici] respectfully requests that the Appellate Court uphold the trial court's decision [Judge Kobayashi] and put an end to this litigation," wrote Quilici on page 31 of her Respondent's Brief In re Marriage of Diana L. Quilici vs Garrett Burkhart 3 C027907 (Consolidated with 3 C029718) on December 3, 1998. Quilici never objected to the orders of August 15, 1996 and August 16, 1996; the statement of decision and judgment on bifurcated issues filed September 16, 1997 as cited by the Court of Appeal of the State of California Third Appellate District. (CT 33.) When she was charged with $518. 78 from Judge Kobayashi's Summary Accounting, (of which she has never paid) Quilici was happy and content. (CT 9 .) Appellant Burkhart wanted her charged with over $21,000 plus sanctions for signing his name to buy stocks and wiping out the bank accounts days before filing for divorce. When it benefited her to stay quiet and support Judge Kobayashi's orders and judgment, Quilici made no objections. But now after the Third District Court of Appeal For The State of California affirmed Judge Kobayashi's orders and judgment in 1999, Respondent Quilici wants to start up the litigation again to see if an inexperienced new Superior Court Judge like Judge Mize can order her some money. Justices Scotland, Callahan, and Davis all bought into her tears and shaking at oral argument when she said that she is in hopes that the court will

uphold the Kobayashi the trial court's decision and put the litigation to an end. (See Respondent's Brief page 3 In re Marriage of Diana Quilici vs Garrett Burkhart 3 C027907 (Consolidated with 3 C029718) on December 3, 1998.) Now it is clear that Quilici is acting in bad faith for her present objections filed April 23, 2001 to the orders of August 15, 1996 and August 16, 1996; the statement of decision and judgment on bifurcated issues filed September 16, 1997. (CT 69 lines 21 - 25 and CT 70 line 1)

Honorable Judge Kobayashi's Minute Order on these issues was filed August 16, 1996. (CT 1.) Quilici was the one who typed up the final judgment more than a year later filed on September 16, 1997. (CT 18 - 26) If she was not happy or felt there were deficiencies in the final judgment, Quilici had more than enough time from August 16, 1996 to report it. For heaven's sake, it took her a year to type it up. Then in 2001 Quilici is saying she needs a better accounting and property division done of that same judgment. The delay was unjustified and in bad faith. Quilici's unreasonable lateness to contend Judge Kobayashi's final judgment was also prejudicial in that important subpoenaed witnesses including Charlie Torgerson did not show up, Judge Kobayashi, who endorsed the original judgment is no longer in family court, and after six years, Appellant Burkhart detrimentally relied on Judge Kobayashi's final judgment that he did not owe Quilici any money after she had wiped out the community savings and left him with the community debt. (Please refer to original Clerk's Transcripts and Reporter's Transcripts.) He has been though enough both financially and mentally. He should not have to endure any more hardship from one woman, especially after six rebuilding years.

Referring back to the original record, at Quilici's request, the trial court entered a final judgment of bifurcated issues and a statement of issues on September 16, 1997. (CT 18.) *This final decree in 1997 made all the provisions of interlocutory judgment binding.* It's not like the Judge Kobayashi endorsed the final judgment and Quilici just received notification by mail. Respondent Quilici was the one who, herself, typed up the final judgment for Judge Kobayashi to sign. She never objected to the final judgment, never to Judge Kobayashi nor in her papers she filed in the appeal.

Even in her oral augment before Justices Scotland, Callahan, and Davis of the Third District Court of Appeal, Respondent never sought to correct or modify the 1997 final decree resolving all issues. On the contrary, wearing a camel hair coat, bleached hair and jewelry, Quilici said amongst her tears that Judge Kobayashi had bent over backwards to make a perfect final judgment. Appellant requests that the readers for justices and the justices themselves call on Justices Scotland, Callahan, and Davis of the Third District Court of Appeal to recall the events of the oral argument as the clerk said that the tape has been purged because it has been so long ago.

This case is an example of an unreasonable delay that caused prejudice. Appellant requested a statement of decision, so that the court of Appeal should question the Court's findings from the 1997 judgment. The Court of Appeal should not limit its review to determining whether there was substantial evidence to support the trial court's findings. The Court of Appeal should determine that from 1996, after the appeal process, after Judge Kobayashi is moved on from family court, to 2001 was an unreasonable delay and created undue prejudice which warrants sanctions against Respondent Quilici in the amount the Court sees fit. So appellant would like the Court of Appeals to permit equitable defenses to prevent the enforcement of the new 2001 judgments. Appellant brought up laches several times in front of the trial court. Because Quilici did not diligently pursue any objection she had from the August 1996 Court Orders nor the final judgment in 1997, which she typed up and submitted, her 2001 request for accounting and property division of the 1997 judgment should be barred. The trial court had discretion whether to permit Respondent Quilici's 2001 Motion Order TO Show Cause For Accounting and Property Division from 1996 Court Orders and the 1997 Final Judgment. Appellant Burkhart prays that The Court finds that the 1996 orders and 1997 judgment which were affirmed by California's Third District Court of Appeal in 1999 be exempt from the 2001accounting and property division. In other words even though Judge Kobayashi's orders and judgment were made last century, they should still be upheld word for word. Any extra dollar amount or word added by Judge Mize is a change to that Kobayashi Judgment. And any modification or change is barred by

laches. Because the Court of Appeals has already affirmed the August 1996 Court Orders and 1997 Final Judgment docketing it as Case Complete and no change has occurred to alter those orders and final judgment.

Because the Court of Appeals decided to affirm the new decisions of Judge Mize, then they are in effect saying their piers: Justices Callahan, Scotland, and Davis were wrong to affirm in full and not modify the Judge Kobayashi's final judgment of 1997.

Failure to resolve controverted issue: The doctrine of implied findings also applies where a statement of decision fails to resolve a principle controverted issue requested by a party. The deficiency is reversible error only if timely brought to the trial court's attention; otherwise the defect is waived. (See Marriage of Arceneaux (1990) 51 C3d at 1133 - 1137, 275 Cr at 798 - 801; compare Marriage of Hardin (1995) 38 CA4th 448, 453, 45 CR 2d 308, 311 & fn. 4-)

IV. DENTIST QUILICI'S 2001 OBJECTION IS BEYOND THE STATUTE OF LIMITATIONS

Quilici did not file her motion for accounting within the statutory time frame as per Code of Civil Procedure Section 1008. To reconsider the matter and modify, amend, or revoke the prior court order, the motion must be made ten days of entry of that order. Quilici's motion was filed April 23, 2001. In her 2001 motion Respondent Quilici writes: [Diana L. Quilici, D.D.S.] requests the court to do an accounting of the court orders of August 15 and 16 1996 (filed Sept 17, 1997) and the Statement of decision and judgment on bifurcated issues signed into order September 16, 1997. (CT 69 lines 22 - 25 and CT 70 line 1.)

Regardless, Code of Civil Procedure Section 1008 applies to orders after hearings. The sole remedy of a review of a trial court is an appeal within the statutory time frame. Please note this is the argument Quilici used on November 13, 1997. (Original CT 744.) It is an argument that Appellant Burkhart would like to use now in order to vacate the new judgments. (CT 98.1, 118,) A party who requests the modification of an order will normally have the burden of proving that there has been a significant change in the circumstances that existed at the time of that order. Quilici failed to

state any such significant change in the circumstances. In fact, she did not state any change at all!

Ambiguities or omissions: The doctrine of implied findings applies where the trial court rendered a statement of decision containing ambiguities or omissions . . . unless the record shows those ambiguities or omissions were timely brought to the trial court's attention. (CCP Section 634) (See county of Solano v. Vallejo Redevelop. Agency (1999) 75 CA4th 1262, 1276 - 1277, 90 CR2d 41, 51 - 52; Rees v. Department of Real Estate (1977) 76 CA3d 286, 291, 142 CR 789, 792)

The Court should hold that Quilici's conduct in failing to disclose and taking deliberate steps to conceal constitutes extrinsic fraud. Applying the three year statute of limitations applicable to fraud, The Court should bar Respondent from now seeking any more money (CCP Section 338.)

V. NEW JUDGE MIZE DID NOT HAVE JURISDICTION OVER C.P.A. JUDGE KOBAYASHI'S ACCOUNTING OF THE 1996 COURT ORDERS AND 1997 FINAL JUDGMENT; YET THE NEW JUDGE MIZE MADE NEW JUDGMENTS FROM STALE 5-YEAR-OLD ISSUES

Succeeding retired Darrell Lewis, James M. Mize arrived in the Spring 2000 to the bench from the private sector. In open court, Judge Mize stated that he had no jurisdiction over the issues raised by Quilici in her Motion Order To Show Cause For Accounting And Property Division file April 2001. This admission of lack of jurisdiction was again presented to Judge Mize and before the court as noted in Appellant Burkhart's Pre-trial Statement. Custody issues were not one of Quilici's issues. Trial Judge Kobayashi did not reserve jurisdiction over accounting nor property issues in his 1996 Court Order nor 1997 Final Judgment. So lacking jurisdiction, Judge Mize violated the law and re- entered old property issues and accountings of property issues and came up with not one but two judgments. What possessed Judge Mize to abandon the law and comes up with new judgments when there already was a final judgment on the record? Perhaps his inexperience being a judge or perhaps his frustration that he had no seniority and was forced to hear this case. Keep in mind this case was scheduled for Department

121 Presiding Judge Michael S. Ullman. Then when Judge Ullman was absent, Judge Mize sent the case to Judge Maryanne Gilliard (CT 119 lines 3 - 4.) Judge Gilliard heard a motion then passed the case back to Judge Mize. The judges are not coming together, said Judge Mize's Clerk when Quilici was trying to fanatically find a judge to make drastic changes to Judge Kobayashi's accounting and final judgment.

The Court of Appeals reversed with directions to the trial court in another California family law case regarding an accounting and even when the trial court reserved jurisdiction. (In Marriage of Schultz (1980) 105 Cal.App. 3d 846.) Likewise, The Court should reverse the misdirected 2001 trial court. The words reserved jurisdiction is nowhere to be found in the original judgment. Despite no reserved jurisdiction over the property and accountings, the misdirected Judge Mize met his demise when after the statutory jurisdiction period, he re-entered the property issues and accounting and erroneously made a new judgment.

VI. NEW TRIAL COURT JUDGE MIZE ERRONEOUSLY ENDORSED TWO FINAL JUDGMENTS AND MADE PROCEDURAL MISTAKES WHICH MATERIALLY ALTERED THE CASE INTO A MISCARRIAGE OF JUSTICE

Let us not forget, there is already one judgment on record from Honorable Judge Kobayashi. Please refer to Judge Kobayashi's Hand-Written Orders and Judgment (CT 1, 4 .) Or if it pleases the Court, the typed up version that Respondent Quilici typed up herself and had it endorsed by Judge Kobayashi. (CT 77, 18.)

Now in 2001 thanks to the erroneous decisions of Judge Mize, Judge Mize has added more judgments into the record over the same old issues that Judge Kobayashi ruled on. Being new to the bench, perhaps Judge Mize thought there is a 6-year shelf life for final judgments. And after six years, you have to make a new judgment using all the old facts and issues. And for good measure and emphasis, you need to endorse another final judgment a few weeks after the first one to give it a longer shelf life. Why else did Judge Mize endorse a Findings And Order After Hearing filed September 27, 2001 over the same old issues. (CT 118.) Then in October, Judge Mize endorsed another Findings And Order After

Hearing over the same old issues again. Appellant Burkhart begs The Court to vacate both these new 2001 decisions from Judge Mize.

In other words, years prior to James M. Mize arriving in the Spring 2000 to the bench from the private sector, there was already a final judgment made by Certified Public Accountant Honorable Judge Kobayashi in 1997 regarding this case. Lacking experience yet overcompensating for it in blind ambition, Judge Mize erroneously heard Quilici's Motion Order To Show Cause for Accounting and Property Division and came up with two new judgments. Where the findings are contradictory on material issues, and the correct determination of such issues is necessary to sustain the judgment, the inconsistency is reversible error (4 Witkin, Cal Procedure (2d ed. 1971 Trial Section 344 (in re marriage of Stephenson (1984) 162 Cal.App. 3d 1057

Judge Mize should have just dismissed Quilici's Motion Filed April 23, 2001. Instead Judge Mize erroneously heard Quilici's complaint. Judge Mize improperly modified the Affirmed Kobayashi's Judgment with two new judgments of his own. Only after Judge Mize had his trial, Judge Mize turned to Appellant Burkhart and said that his notice of motion to dismiss Quilici's could be heard. Judge Mize did it wrong. The motion to dismiss is suppose to be heard before the trial.

Judge Mize should not have:

1. Continued Appellant Burkhart's notice of motion to dismiss Quilici's motion (CT 119 lines 5 - 6.)

2. Had a trial based on Quilici's Motion (CT 66.) California's Third District Court of Appeal Justices Scotland, Callahan, and Davis: The Superior Court of Sacramento County Rules, rule 14.17 (F) provides: Where a matter is set for contested trial, both parties shall file and serve a 'Statement of Issues, Contentions and Proposed Disposition of the Case' at least 20 days prior to the trial date, . . . If both parties fail to timely file or serve a Statement pursuant to this part, the matter shall not be permitted to proceed to trial. . . . Failure by one party to timely file or serve a Statement pursuant to this rule will allow the complying party to proceed to trial or continue or drop the trial date and may result in the imposition of sanction. . . . The Statement shall be filed and served 20 days before the trial or served

25 days before the trial if served by mail. . . . (CT 40 .) Despite the fact Quilici did not file and serve a Statement of Issues, Judge Mize erroneously rushed the trial through anyway. (CT 119 lines 9 - 13.) (See also the letter of designation and that the clerk said Quilici's Statement of Issues does not exist.)

3. Denied Appellant Burkhart's request for a continuance when subpoenaed Witness Charles Torgerson failed to show for trial (CT 119 - 120.)

4. Heard Appellant Burkhart's motion to dismiss Quilici's complaint after the trial. (CT 119 lines 21 - 23)

5. Ignored Judge Kobayashi's final judgment and issued his own final judgment.

6. Endorsed another judgment.

7. Changed Trial Curt Judge and Certified Public Accountant Kobayashi's 1996 Court Orders and Final Judgment. There was no order for Appellant Burkhart to pay Respondent Quilici any money in the 1996 Court Orders nor in the Statement of Decision And Judgment on Bifurcated Issues filed September 16, 1997 (CT 77, 18.) Judge Mize provided no statutory basis for his changing of Judge Kobayashi's judgment. Appellant Burkhart believes Judge Mize's Statement of Decision is insufficient in that it is not exact and to the point. (CT 120.) Is Judge Mize saying that Judge Kobayashi failed to do his duty as a trial court judge and was negligent in handing down the 1996 Court Orders and Final Judgment? Because Judge Mize changed the original judgment, is Judge Mize also saying Justices Scotland, Callahan, and Davis of the California Third District Court of Appeals are also negligent because those justices affirmed Judge Kobayashi's orders and final judgment?

8. Ordered that Appellant Burkhart cannot file any papers, now under case management

9. Changed custody when it was not an issue Quilici had brought before the court. Moreover, Judge Mize should not have ruled on custody without first going to mediation .

10. Accrued interest from 1997 when there was no judgment to make any money payments. There was no order for Appellant Burkhart to pay Dentist Quilici any money in the 1996 Court Orders nor in the Statement of Decision And Judgment on

Bifurcated Issues filed September 16, 1997 (CT 77, 18.) Because Trial Court Judge Kobayashi made no order for Appellant Burkhart to pay Appellee Quilici any money, it is erroneous for New Trial Judge Mize to change everything and order Appellant Burkhart to pay with interest in arrearages from all those years back! Saints preserve us!

At the very least, The Court should strike down Quilici's award just as the 9th U.S. Circuit Court of Appeals struck down an award. The San Francisco based Court of Appeals said the award was excessive and they sent the case back down to get fixed. (See Decision of 9th Circuit Court of Appeals November 7, 2001 @ CNN.com Law Center) Likewise, the Sacramento based Court of Appeals should send this case back down to get fixed. Quilici's award is excessive and needs to be struck down.

Once again, appellant is Garrett R. Burkhart, dentist who is proud to have worked at U.S. Army Base Fort Ord, California and tired of his ex-wife taking him back to court for an accounting of an old judgment, in which she, herself typed up for the Original Trial Court Judge Charles Kobayashi to sign.

Appellee is Diana L. Quilici, Dr. Burkhart's ex-wife. Because Dr. Burkhart sacrificed himself to be a guinea pig patient for then Dental Student Quilici, she practiced drilling in his mouth before she received her license and was her licensing requirement even for her dental board exam. Her boss, Dr. Norman Trieger at Montefiore Albert Einstein, said that she was delusional and could not cope. Appellee Dentist Quilici drove a vacuum cleaner through the parties' bank accounts and investments days before she filed for divorce. In her disclosure statement, she committed perjury and denied any student loans because she thought she would have to continue to help pay off the dental school loans. Whereas, appellant told the truth and disclosed the dental school loans. He, himself, signed promissory notes with Creighton University and other commercial lending institutions. Each semester he would receive the checks from the commercial lenders and deposit the checks in the community's joint checking account. Then when the day came to register for that semester, he withdrew the money out of the community checking account. So, Appellee Quilici shows that

money coming out of our checking account and wants credit for it, as if it were the parties' actual money. However the source of the money is from appellant's promissory notes from the commercial lending parties. Appellee Quilici also wants money judgment from the money she claims came out of our joint checking account six months after appellant graduated to help pay back the student loans. Appellant's attorney said that Appellee Quilici double-dipped her figures on a subsequent disclosure. But through her tears and tremors, she was able to convince the court and later even typed up the court orders and judgment herself.

Dr. Burkhart's father served in The U.S. Navy in WWII. However, Dr. Quilici's father hid and ran away to Canada when he was drafted. Those distinctive qualities were handed down to their children. That is why Dr. Burkhart fully disclosed and was honest; whereas Dr. Quilici did not tell her husband she wanted a divorce and depleted all the accounts she could get her hands on and then hid and ran away.

CONCLUSION

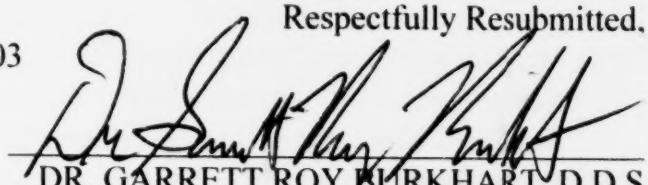
The petition for a writ of certiorari should be granted. Appellant Burkhart was under the impression the case was closed. He believed California's Third District Court of Appeal Justices Scotland, Callahan, and Davis when they affirmed the 1997 judgment and docketed: CASE COMPLETE" (See In re Marriage of Diana Quilici and Garrett Burkhart Case No. 3 Civil CO27807 (Consolidated with 3 Civil CO29718) stemming from the very same Sacramento Superior Court Case #95 FLO4792.

No new facts, action, or evidence in the case occurred between the years from when The Court of Appeals for the Third District of California affirmed the Trial Court Judge Kobayashi's final judgment in 1999 to the time when the New Trial Court Judge Mize issued his final two judgments in 2001. Appellant requests this case published, vacate the new 2001 decisions from Judge Mize, and uphold California's Third District Court of Appeal Justices Scotland, Callahan, and Davis decision in 1999 to affirm Certified Public Accountant Trial Court Judge Kobayashi's orders and final judgment. Thus nobody was ordered to pay either party, both being dentists, any money.

Appellant would like to thank The Court for their help and understanding. For the sake of Garrett and his son Garrett Jr., as well as for all the other Americans who need to move on with their lives, releasing the albatross from their necks, we pray for your help. If the petition for writ of certiorari should not be granted, what will keep the ex-wife from filing another motion for accounting in another two years from now?

Respectfully Resubmitted,

From February 28, 2003
To May 15, 2002



DR. GARRETT ROY BURKHART, D.D.S
IN PROPRIA PERSONA

APPENDIX A

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

No. 95 FL04792

Petitioner: Diana L. Quilici

v.

Respondent: Garrett Burkhart

[Argued : 1997
Ordered filed September 16, 1997]
Before: Presiding Family Court Judge Charles C. Kobayashi

STATEMENT OF DECISION

FEDERAL RETIREMENT TSP ACCOUNT
Respondent's community share of the Federal Retirement TSP Account is $8,732 with total community interest being $17,464. If the overall accounting at the conclusion of these proceedings show that Respondent owes Petitioner, then this will be an asset which whould be used to pay Petitioner.

FERS
The $12, 362 value is the appropriate community value since vesting was a virtual certainty. The $12,362incommunity value will be awarded and confirmed to Petitioner.

PRUDENTIAL INVESTMENT
Respondent and Petitioner each already have their respective shares divided equally, no Court action is necessary and the previous divided amounts are confirmed to each party.

WELLS FARGE BANK

$3,714 from Wells Fargo Bank was withdrawn by Petitioner and she has not shown that Respondent either took or used the moneys. At trial Petitioner was unable to show that Respondent withdraw or used $2,800 on 3/27/95 and $600 on 4/10/95. $3,714 from Wells Fargo Bank shall be charged to petitioner.

FIRST NATNTIONAL BANK OF OMAHA

There is no basis for Respondent's contention that there is doubt that Petitioner's paychecks went into the bank account of First National Bank of Omaha. The documents clearly show that Petitioner's paychecks went directly from her employer to the bank.. All deposits and expenditures were community except as otherwise discussed hereafter. See Petitioner's Exhibits "XYZ" and Exhibit "I". There will be no charge to Petitioner of $3,204.39 or any amount whatsoever related to petitioner's pay checks.

HOME SAVINGS OF AMERICA

Although Respondent states that Respondent's Exhibit "R" shows that there was $20,000 in the several accounts at Home saving between April and July 1995 and that petitioner should be charged with $20,000, the evidence does not support his claim. In fact, the claim is frivolous because the evidence at the trial clearly showed the contrary. (See Petitioner's Exhibit 1 to 4. The moneys in account 098008902-3 (7/13/95 of $3,o49.12, account no. 44-069899-1 (7/13/95) $4,071 and account no. 044-071815-3 (7/13/95) $502.58 were transferred to account no. 044-068565- from which Petitioner took out $7,500 on 7/13/95 to pay her attorney Mary Martinelli, and that Petitioner was already charged with that amount at the 8/90 trial.

Respondent also fails to acknowledge that the money in account no. 044-068794-5 was used partially for Dr. Filipelli and $5,000 was already charged to Respondent for $5,000 retainer with Jill Demmel. In addition, when the account was closed by Respondent and Petitioner together on 11/21/95, $1,018.69 ($1,014.69 plus $4.00 charged) and Petitioner used it for payment to her attorney Mary Martinelli.

Ass for the other amounts alluded to by Respondent, the

evidence at the trial established that from account no 098008902-3, $2,500 was used to pay a community credit card debt on 4/1/95, $500 was used to pay Franchise Tax Board taxes on 4/1/95, and $3,000 on 5/1/95 for Respondent's car. In addition respondent withdrew $500 on 1/20/95 for UNC Law School (community expenditure), $285 on 4/8 (200 cash plus $85 check), $860.53 on 4/8 and $1,635 ($590 cash and $1,045 check on 6/9. It was further established at trial that on 6/17 Petitioner withdrew $650 in cash and $285.13 for Mercy Hospital bill (total of $935.13), on5/19 $250 cash for herself and $703.97 for credit card payment (total of $953.97), $250 cash on 5/26 and $156.56 cash on 7/17/95. In addition Petitioner had withdrawn $973.54 on 7/13/95 from account 044-068565-9.

In the absence of other evidence the Court finds that the other amounts of $280 (1/13, $470 (1/13, $587.59 (2/17) 4225.30 (3/20, $100 (5/26) and $100 (5/26) were for community purposes and not chargeable to either Respondent or Petitioner.

Summary:

Respondent		Petitioner
4/8/95 $200.00 Cash	6/17	$650.00 Cash
85.00 Check	5/19	$250.00 Cash
$860.53 Check	5/26	$259.00 Cash
6/9/95 $590.00 Cash	7/17	$156.56 Cash
$1,045.00 Check	11/21	$1,018.69 Attorney fees
		$973.54 Check
$2,780.53		$3,298.79

Therefore: $3,298.78 Petitioner received from Home Savings
$2,780.00 Respondent received from Home Savings
Chargeable to petitioner: $518.78

APPENDIX B

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

No. 95 FLO4792

Petitioner: Diana L. Quilici

v.

Respondent: Garrett R. Burkhart

[Argued: July 26 & 27, 2001
Ordered filed: September 27, 2001]
Before: Family Court Judges Maryanne G. Gillard & James M. Mize

FINDINGS AND ORDER AFTER HEARING

James M. Mize, Family Court Judge:
Department 123 Honorable Judge James M. Mize continued the motion in limine on 7-25-01 under protest to 7-26-01
Department 122 Honorable Judge Maryanne Gilliard granted the application to quash on 7-26-01 under protest.
Department 123 Honorable Judge Mize continued the trial along with the notice of motion to dismiss and the motion in limine to 7-27-01.
On 7-27-01 Department 123 Honorable Judge Mize did an accounting and property division of the 1997 judgment under protest. Judge Mize accounted for arrearages under protest. Despite the fact petitioner did no file and serve a statement of issues, Judge Mize referenced the 1997 judgment of bifurcated issues, which had no proof of service of petitioner's typed up version, and found that respondent should owe $33,643.50. (thirty-three thousand-six hundred-forty-three dollars and fifty cents.)
The court ordered no derogatory statements in front of the parties' only child, Garrett Burkhart, Jr.
The parties only have one child together. Petitioner's other children are in no way shape or form related or tied in any way to respondent.
The court dismissed some motion to set aside the typed up 1997 version of 1997 judgment.
The court dismissed respondent's notice of motion to dismiss

petitioner's motion order to show cause for accounting and property division from the 1997 Judgment under protest.
The court dismissed respondent's motion in limine under protest.
Despite the requests to continue the trial for many reasons including but no limited to subpoenaed Witness Charlie Torgerson failed to show for trial, the court proceeded and with its ruling:
The parties shall split any uncovered medical expenses for the only minor child, Garrett Burkhart, Jr. Each party shall bear their own attorney's fees/ cost. The court's statement of decision:
"I would indicate that on each of the items as indicated and requested to be ordered n this court, I have listed very carefully in the record the foundation for my ruling, the factual basis for the ruling, and the legal basis for the ruling; and therefore, the statement of decision is included within the transcript of these proceedings."

APPENDIX C

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THIRD APPELLATE DISTRICT

No. CO39473 (Super. Ct. No. 95FLO4792)

DIANA L. QUILICI, Respondent

v.

GARRETT BURKHART, Appellant

[Opinion filed October 8, 2002]
Before: NICHOLSON, Acting P.J., MORRISON AND HULL

OPINION OF THE COURT

NICHOLSON, Acting P.J.

Their marriage dissolved in 1996, respondent Diana Quilici (Wife) and appellant Garrett Burkhart (Husband), both appearing in

propria persona. Continue to litigate property issues.
Husband previously appealed various orders and judgments, which we affirm. (in re Marriage of Quilici and Burkhart (July 29, 1999, C027807/ C029718 [nonpub. opn.].) Here, Husband appeals the judgment equalizing the distribution of community property. We affirm.

BACKGROUND

We need no repeat the detailed account of the proceedings leading up to the prior appeal.

On September 16, 1997, the trial court (Judge Charles Kobayashi, presiding) issued a "Statement of Decision and Judgment on Bifurcated Issues." As we will discuss below, it is apparent from the statement of decision that the trial court left issues remaining, including the eventual equalization of the community property distribution.

As noted, we affirmed the orders and judgments from which husband appealed. (In re Marriage of Quilici and Burkhart, supra.) Thereafter, Husband petitioned for review in the California Supreme Court. When that court denied review, Husband petitioned for writ of certiorari in the United States Supreme Court. That petition was denied on April 3, 2000.

On April 23, 2001 Wife filed a motion for an accounting to equalize the community property distribution. In response, Husband moved to set aside the September 1997 judgments. He also moved to dismiss the motion for an accounting. The trial court (Judge James Mize, presiding) denied husband's motions.
After an accounting, the court, among other things, determined that, in addition to the orders already made, Husband was required to pay Wife $33,643.50 to equalize the distribution of community property.

Husband appeals.1

DISCUSSION

1Just 18 days before oral argument well after the briefing was completed Husband filed a motion to correct the record. We deny the belated motion As we noted at oral argument this court is in possession of the records from prior appeals

I

Res Judicata

Upon dissolution of a marriage, the court, except under circumstances not applicable here, must equally divide the community estate of the parties. (Fam. Code, sec 2550.) Husband argues the trial court could not do an accounting to equalize the distribution of assets because there was a prior order that was appealed to this court and affirmed. He asserts res judicata bars any further property determinations. This argument ignores the nature of the prior judgment and accompanying statement of decision, which, on its face, contemplated further proceedings to equalize the distribution.

Re judicata bars relitigation of a factual issue already contested and decided. (Professional Engineers v. Department of Transportation (1997) 15 Cal.4th 543,591.) The September 1997 statement of decision made it clear the court was considering bifurcated issues. For example, in the portion of the statement of decision entitled "Judgment," the court ruled regarding a federal retirement account: "If the overall accounting at the conclusion of these proceedings show that [Husband] owes [Wife], then this will be an asset which should be used to pay [Wife]." Clearly, the trial court did not regard its order as a final accounting equalizing the distribution of community property.

In the prior appeal, Husband contended, generally, the trial court had not divided the community property equally. However, his specific assertion did not challenge the overall distribution. Instead, he asserted: "(A) the court divided the property without an appraisal; (B) Wife misappropriated community assets; (C) the court failed to divide the FERS pension; and (D) the court failed to divide the community debt." (In re Marriage of Quilici and Burkhart, supra, at p. 26.) As can be seen, these contentions did not implicate the overall property distribution. Thus, the issue of whether the community property had been equally divided was not decided. It is

no, therefore, res judicata.

Since the equal division of all community property was never litigated and decided before the judgment from which Husband now appeals, the trial court's determination was not barred by res judicata.

II

Laches

Husband contends the trial court should have denied Wife's motion for an accounting because "an unreasonable length of time . . . had passed since the final judgment." We reject this argument for three reasons. First, Husband did not adequately raise the issue of laches in the trial court. He may not do so for the first time on appeal. (See People v. Garceau (1993) 6 Cal.4th 140, 203 [appellate courts do no consider issues not property raised in trial court].) In is statement of issues submitted to the trial court in reply to the motion for an accounting, Husband stated he "would also like to use laches as his defense to [Wife's] claim for accounting on a 1997 judgment on a case which [Wife] instigated in 1995." Husband gave no authority for this statement and made no attempt to show that a finding of laches was appropriate. (See People v. Freeman (1994) 8 Cal.4th 450, 482, fn.2 [issues mentioned but not properly reasoned and supported are not adequately raised].)

Second, we reject the argument concerning laches because it is based on Husband's erroneous claim the September 1997 statement of decision was a final adjudication of the rights of the parties concerning the community estate. The September 1997 judgment, based on the statement of decision, did not finally adjudicate the issue of a final accounting to equalize the distribution of the community estate. Therefore, the premise of Husband's argument, that there was a prior final judgment that was modified by the current proceedings, fails.

And third, this is not a case in which laches is a valid defense.

"The defense of laches requires unreasonable delay plus either acquiescence in the act about which plaintiff complains or prejudice to the defendant resulting from the delay." (Conti v. Board of Civil Service Commissioners (1969) 1 Cal.3d 351, 359, fns. Omitted.) Here, Wife's delay was not unreasonable and did not prejudice Husband. She filed her motion for an accounting approximately one year after Husband's petition for writ of certiorari was denied by the United States Supreme Court. Since there had never been a final accounting, the completion of that accounting by the trial court did not prejudice Husband.

III

Time Limit for Reconsideration

Characterizing it as a statute of limitations argument, Husband asserts Wife's motion for an accounting was not timely because it was not made within 10 days after entry of the September 1997 judgment on bifurcated issues. (See Code Civ. Proc., section 1008 [allowing motion for reconsideration within 10 days after service of order].) This assertion fails because the judgment on appeal here was not a modification of the judgment on bifurcated issues entered in September 1997. The 1997 judgment made determinations on specific issues of property rights, among other issues. Those determination were incorporated into the trial court's final accounting to equalize the community property distribution.

IV

Trial Court's Jurisdiction to Enter Judgment

Husband complains that the trial court did not have jurisdiction to change the orders and judgments entered in 1997. While we agree those orders and judgments were final after review, the later actions of the trial court did not modify those orders and judgments with respect to property issues. As we explained above, those orders and judgments were incorporated into a final accounting to equalize the distribution of community property.

Husband also asserts the trial court did not reserve jurisdiction over property issues. However, there was no need to reserve jurisdiction because the court had not yet done a final accounting to equalize the distribution of community property.

V

Cumulative Effect of Errors

Husband asserts the cumulative effect of the trial court's errors resulted in a miscarriage of justice, requiring reversal. In making this argument, Husband not only relies on his prior assertions of error but summarily asserts error in several other aspects of the proceedings. To the extent this is an attempt to raise other issues, we reject these summary assertions. (See People v. Freeman, supra, 8 Cal.4th at p. 482, fn. 2 [issues mentioned but not properly reasoned and supported are not adequately raised]; Opdyk v. California Horse Racing Bd. (1995) 34 Cal.App.4th 1826, 1830-1831, fn. 4 [issues not properly headed and argued individually are waived.) Since we have found no error, we reject Husband's assertion that a miscarriage of justice occurred.

DISPOSITION

The judgment is affirmed. Husband's motion to correct the record on appeal is denied.

NICHOLSON, ACTING P.J.

We concur:

MORRISON, J.

HULL, J.

APPENDIX D

IN THE COURT OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

No. C039473 (Super. Ct. No. 95FLO4792)

DIANA L. QUILICI, Respondent

v.

GARRETT BURKHART, Appellant

Filed November 5, 2002

ORDER DENYING PETITION FOR REHEARING

THE COURT:

In his petition for rehearing, appellant asserts "the notice of appeal from the first appeal . . . came from McDonough, Holland & Allen . . . ." There is no indication in this court's files that a notice of appeal "came from McDonough, Holland & Allen." (See case Nos. C027807, C029718, C036232, C039473.) Furthermore, examination of the record reveals this case commenced July 19, 1995, after Justice was appointed to the superior court bench.

Each of appellant's arguments for rehearing is without merit. Accordingly, the petition for rehearing is denied.

THE COURT:

NICHOLSON, Acting P.J.

MORRISON, J

HULL, J

APPENDIX E

Court of Appeal, Third Appellate District – No.C039473

S111233

IN THE SUPREME COURT OF CALIFORNIA

En Banc

DIANA L. QUILICI, Respondent,

v.

GARRETT BURKHART, Appellant.

Filed December 11, 2002

Petition for review DENIED.

The request for an order directing publication of the opinion is denied.

GEORGE, Chief Justice